

The ILND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See instructions on next page of this form.)

I. (a) PLAINTIFFS

Backgrid USA Inc.

(b) County of Residence of First Listed Plaintiff Los Angeles County, California
(Except in U.S. plaintiff cases)

(c) Attorneys (firm name, address, and telephone number)

Charles Wentworth, The Law Office of Lofgren & Wentworth, P.C.
536 Crescent Blvd. Suite 200, Glen Ellyn, IL 60137
(630) 469-7100

DEFENDANTS

Modern Notoriety Inc.
Oscar Castillo

County of Residence of First Listed Defendant Cook County, Illinois (both)
(In U.S. plaintiff cases only)

Note: In land condemnation cases, use the location of the tract of land involved.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Check one box, only.)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government not a party.)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate citizenship of parties in Item III.)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(Check one box, only for plaintiff and one box for defendant.)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Check one box, only.)

CONTRACT	TORTS	PRISONER PETITIONS	LABOR	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 530 General <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	Habeas Corpus: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA)
			PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Arts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	BANKRUPTCY	FORFEITURE/PENALTY	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities- Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Check one box, only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File (specify)
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VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

17 USC Sec 501

VIII. REQUESTED IN COMPLAINT: Check if this is a class action under Rule 23, F.R.C.V.P.

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

Demand \$ 1,050,000

CHECK Yes only if demanded in complaint:
Jury Demand: Yes No

IX. RELATED CASE(S) IF ANY (See instructions):

Judge

Case Number

X. Is this a previously dismissed or remanded case?

Yes No If yes, Case #

Name of Judge California Dist Court (see attached)

Date: November 5, 2021

Signature of Attorney of Record /s/ Charles G. Wentworth

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BACKGRID USA, INC., a
California corporation,
Plaintiff,

CV 21-03318-RSWL- (PDx)

ORDER re: Defendant Oscar Castillo's Motion to Dismiss [17]

MODERN NOTORIETY INC., an Illinois corporation; OSCAR CASTILLO, an individual; and DOES 1-10, inclusive.

Defendants.

Plaintiff BackGrid USA, Inc. ("Plaintiff") brings this action for copyright infringement against Defendants Modern Notoriety Inc. ("Corporate Defendant") and Oscar Castillo ("Defendant Castillo") (collectively, "Defendants"). Before the Court is Defendant Castillo's Motion for Dismissal Under Rule 12(b)(1) Due to Lack of Personal Jurisdiction and Improper Venue Under FRCP 12(b)(2) and 12(b)(3) (the "Motion") [17].

1 Having reviewed all papers submitted pertaining to
2 the Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**
3 the Court **GRANTS** Defendant Castillo's Motion for
4 improper venue under Rule 12(b) (3) and **DENIES as moot**
5 Defendant Castillo's remaining grounds for dismissal.

6 **I. BACKGROUND**

7 **A. Factual Background**

8 The following allegations are taken from
9 Plaintiff's Complaint.

10 Plaintiff is a California corporation with its
11 principal place of business in Redondo Beach,
12 California. Compl. ¶ 3, ECF No. 1. Plaintiff owns and
13 operates one of Hollywood's largest celebrity photograph
14 agencies. Id. ¶ 7. Plaintiff owns the intellectual
15 property rights to celebrity photographs that have been
16 licensed to prominent media outlets throughout the
17 world. Id.

18 Corporate Defendant is an Illinois corporation with
19 its principal place of business in Chicago, Illinois.
20 Id. ¶ 4. Defendant Castillo, an individual residing in
21 Chicago, is the founder and editor-in-chief of Corporate
22 Defendant. Id. ¶ 5. Corporate Defendant owns,
23 operates, and controls modern-notoriety.com (the
24 "Website"), which is dedicated to athletic shoes. Id.
25 ¶ 10. It also features an online shop that sells Modern
26 Notoriety-branded streetwear. Id. To promote its
27 website and shop, Corporate Defendant operates and
28 controls an Instagram account that links back to the

1 website and drives traffic to the website's banner
 2 advertisements and online shop that generate revenue to
 3 Defendants. Id.

4 Plaintiff alleges that Defendants infringed
 5 Plaintiff's copyrights to seven of Plaintiff's
 6 photographs (the "Subject Photographs") by posting them
 7 on Corporate Defendant's Website and social media
 8 account without Plaintiff's permission. Id. ¶¶ 11, 19.
 9 Defendant Castillo is credited as the author of the
 10 allegedly infringing posts. Id. ¶ 11. Plaintiff
 11 further alleges that Defendants encourage their fans to
 12 "share" the photographs by uploading the Subject
 13 Photographs to their account. Id. ¶ 12.

14 **B. Procedural Background**

15 Plaintiff filed its Complaint [1] against
 16 Defendants on April 16, 2021, alleging copyright
 17 infringement in violation of 17 U.S.C. § 501.

18 On May 19, 2021, Defendants filed the present
 19 Motion [17]. The Court struck [18] the Motion as to
 20 Corporate Defendant on June 4, 2021, on the grounds that
 21 Corporate Defendant cannot appear *pro se*. Plaintiff
 22 filed its Opposition [19] on June 15, 2021. Defendant
 23 Castillo filed his Reply [21] on June 22, 2021.

24 **II. LEGAL STANDARD**

25 **A. Personal Jurisdiction**

26 Federal Rule of Civil Procedure ("Rule") 12(b) (2)
 27 provides a basis for moving to dismiss a claim for lack
 28 of personal jurisdiction. Fed. R. Civ. P. 12(b) (2) .

1 Once personal jurisdiction is challenged, the plaintiff
 2 bears the burden of demonstrating that jurisdiction is
 3 appropriate. See, e.g., Boschetto v. Hansing, 539 F.3d
 4 1011, 1015 (9th Cir. 2008); Pebble Beach Co. v. Caddy,
 5 453 F.3d 1151, 1154 (9th Cir. 2006). Where the motion
 6 is “based on written materials rather than an
 7 evidentiary hearing, the plaintiff need only make a
 8 *prima facie* showing of jurisdictional facts” to survive
 9 dismissal. Mavrix Photo, Inc. v. Brand Techs., Inc.,
 10 647 F.3d 1218, 1223 (9th Cir. 2011).

11 “The plaintiff cannot ‘simply rest on the bare
 12 allegations of [the] complaint,’ but uncontested
 13 allegations in the complaint must be taken as true.”
 14 Id. (quoting Schwarzenegger v. Fred Martin Motor Co.,
 15 374 F.3d 797, 800 (9th Cir. 2004)). If, however, the
 16 defendant presents evidence contradicting the
 17 allegations in the complaint, the plaintiff must “come
 18 forward with facts, by affidavit or otherwise,
 19 supporting personal jurisdiction.” Barantsevich v. VTB
 20 Bank, 954 F. Supp. 2d 972, 982 (C.D. Cal. 2013) (quoting
 21 Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986)).
 22 “[D]isputed allegations in the complaint that are not
 23 supported with evidence or affidavits cannot establish
 24 jurisdiction[.]” AMA Multimedia, LLC v. Wanat, 970 F.3d
 25 1201, 1207 (9th Cir. 2020). Although the court “may not
 26 assume the truth of allegations in a pleading which are
 27 contradicted by affidavit,” factual disputes must be
 28 resolved in the plaintiff’s favor. Mavrix Photo, 647

1 F.3d at 1223 (citations omitted).

2 "Personal jurisdiction over [a nonresident]
 3 defendant is proper where permitted by a long-arm
 4 statute and where the exercise of jurisdiction does not
 5 violate federal due process." AMA Multimedia, 970 F.3d
 6 at 1207 (citing Pebble Beach, 453 F.3d at 1154). Where
 7 no applicable federal statute governs personal
 8 jurisdiction, "the district court applies the law of the
 9 state in which the court sits." Mavrix Photo, 647 F.3d
 10 at 1223. "Because 'California's long-arm statute allows
 11 the exercise of personal jurisdiction to the full extent
 12 permissible under the U.S. Constitution,' our inquiry
 13 centers on whether exercising jurisdiction comports with
 14 due process." Picot v. Weston, 780 F.3d 1206, 1211 (9th
 15 Cir. 2015) (quoting Daimler AG v. Bauman, 571 U.S. 117,
 16 125 (2014)); see Cal. Code Civ. Proc. § 410.10.

17 Constitutional due process requires that a
 18 nonresident defendant have "certain minimum contacts
 19 with [the forum state] such that the maintenance of the
 20 suit does not offend 'traditional notions of fair play
 21 and substantial justice.'" Goodyear Dunlop Tires
 22 Operations, S.A. v. Brown, 564 U.S. 915, 923 (2011)
 23 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316
 24 (1945)). Depending on the nature and extent of the
 25 defendant's contacts with the forum state, a court may
 26 exercise either general or specific jurisdiction.
 27 Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S.
 28 Ct. 1773, 1780 (2017). General jurisdiction exists when

1 the defendant's contacts "are so continuous and
 2 systematic as to render [it] essentially at home in the
 3 forum State." Daimler, 571 U.S. at 139 (internal
 4 quotation marks and citation omitted). By contrast,
 5 specific jurisdiction exists when the suit "aris[es] out
 6 of or relate[s] to the defendant's contacts with the
 7 forum." Id. at 127 (citations omitted).

8 **B. Improper Venue**

9 Under Rule 12(b) (3), a defendant may move to
 10 dismiss on the basis of improper venue. Fed. R. Civ. P.
 11 12(b) (3). Once a defendant raises an objection to
 12 venue, the plaintiff bears the burden of establishing
 13 that venue is proper. See Piedmont Label Co. v. Sun
 14 Garden Packing Co., 598 F.2d 491, 496 (9th Cir. 1979).
 15 In the context of a Rule 12(b) (3) motion, the court need
 16 not accept the allegations in the complaint as true and
 17 may consider facts outside the pleadings. See Murphy v.
 18 Schneider Nat'l, Inc., 362 F.3d 1133, 1137 (9th Cir.
 19 2004). If the court determines that venue is improper,
 20 the court must either dismiss the action or, if it is in
 21 "the interest of justice," transfer it "to any district
 22 or division in which it could have been brought." 28
 23 U.S.C. § 1406(a). Whether to dismiss an action for
 24 improper venue, or alternatively to transfer venue to a
 25 proper court, is entirely within the discretion of the
 26 district court. See King v. Russell, 963 F.2d 1301,
 27 1304 (9th Cir. 1992).

28 ///

III. DISCUSSION

Defendant Castillo moves to dismiss on three grounds: (1) he is not subject to personal jurisdiction in California; (2) venue is improper; and (3) his use of the Subject Photographs is de minimis or constitutes fair use. See generally Mot. & Castillo Decl. 1, ECF No. 17. Because the Court concludes that venue is improper in the Central District of California, it does not reach Defendant Castillo's other arguments.

For copyright actions, venue is proper "in the district in which the defendant or his agent resides or may be found." 28 U.S.C. § 1400(a). The Ninth Circuit "interprets this provision to allow venue in any judicial district where, if treated as a separate state, the defendant would be subject to personal jurisdiction." Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1126 (9th Cir. 2010) (citation omitted). The Court thus considers whether Defendant Castillo would be subject to personal jurisdiction in this district to determine whether venue is proper.

A. General Jurisdiction

"The standard for general jurisdiction 'is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.'" Mavrix Photo, 647 F.3d at 1224 (quoting Schwarzenegger, 374 F.3d at 801). A plaintiff must show that a nonresident defendant's

1 contacts are "so continuous and systematic as to render
 2 [it] essentially at home in the forum State." Daimler,
 3 571 U.S. at 139 (internal quotation marks and citations
 4 omitted). "For an individual, the paradigm forum for
 5 the exercise of general jurisdiction is the individual's
 6 domicile" Id. at 137 (quoting Goodyear, 564
 7 U.S. at 924).

8 There is no dispute that Defendant Castillo resides
 9 in Chicago, Illinois. See Compl. ¶ 5; Mot. & Castillo
 10 Decl. 1. Plaintiff argues that Defendant Castillo is
 11 amenable to general jurisdiction because the Website
 12 contains advertisements directed to Southern California
 13 residents and Defendant Castillo uses the Website to
 14 solicit Southern California customers and users. See
 15 Opp'n 7:11-8:6, ECF No. 19.

16 These contacts are insufficient to establish
 17 general jurisdiction over Defendant Castillo. Although
 18 third parties use Defendant Castillo's Website to
 19 advertise Southern California law firms, health care
 20 services, and other businesses, see Ardalan Decl. Ex. A,
 21 ECF No. 19-2, Defendant Castillo "does not 'solicit[] .
 22 . . business in the state' by carrying those
 23 advertisements." Mavrix Photo, 647 F.3d at 1225
 24 (quoting Bancroft & Masters, Inc. v. Augusta Nat'l Inc.,
 25 223 F.3d 1082, 1086 (9th Cir. 2000), overruled in part
 26 on other grounds by Yahoo! Inc. v. La Ligue Contre Le
 27 Racisme Et L'Antisemitisme, 433 F.3d 1199, 1207 (9th
 28 Cir. 2006) (en banc)). Rather, Defendant Castillo

1 allows those third parties to solicit business by taking
 2 advantage of his existing user base. See id. “Evidence
 3 that a nonresident defendant advertises in a forum is
 4 significant for general jurisdiction when the defendant
 5 markets its own product by targeting forum residents, .
 6 . . but has less significance for general jurisdiction
 7 when other entities use the defendant’s publication to
 8 promote their own businesses.” Id. at 1225-26 (internal
 9 citations omitted).

10 That Defendant Castillo’s Website and social media
 11 accounts have Southern California customers and
 12 “followers” is likewise insufficient. See Opp’n 7:11-
 13 8:6; Ardalan Decl. Ex. B, ECF No. 19-3; Compl. ¶ 2.
 14 “[O]ccasional sales to forum residents by a nonresident
 15 defendant do not suffice to establish general
 16 jurisdiction.” Mavrix Photo, 647 F.3d at 1226 (internal
 17 quotation marks and citations omitted); see Ranza v.
 18 Nike, Inc., 793 F.3d 1059, 1070 (9th Cir. 2015) (“[T]he
 19 general jurisdiction inquiry examines a [nonresident
 20 defendant]’s activities worldwide—not just the extent of
 21 its contacts in the forum state—to determine where it
 22 can be rightly considered at home.” (citing Daimler, 571
 23 U.S. at 139 n.20)). In addition, the fact that
 24 Defendant Castillo’s universally accessible social media
 25 account has some “followers” in the Southern California
 26 area is merely fortuitous and does not support general
 27 jurisdiction. See Sussman v. Playa Grande Resort, S.A.
 28 de C.V, 839 F. App’x 166, 168 (9th Cir. 2021) (“[The

1 defendant]'s website is accessible to people all over
2 the world and does not establish general jurisdiction in
3 California simply because California residents can
4 access it." (citing Schwarzenegger, 374 F.3d at 801)).
5 Contrary to Plaintiff's position, it is not enough that
6 a nonresident defendant "engage in 'continuous and
7 systematic general business contacts' within the forum
8 state." Opp'n 7:7-19. Instead, the nonresident
9 defendants' contacts must be "so 'continuous and
10 systematic' as to render [him] essentially at home" in
11 the forum. Daimler, 571 U.S. at 139 (quoting Goodyear,
12 564 U.S. at 919).

13 Defendant Castillo has virtually no contacts with
14 California or this district. See Mot. & Castillo Decl.
15 ¶¶ 1-10. Defendant Castillo has no paid employees,
16 agents, or representatives in California. Id. ¶ 2. Nor
17 does he have financial accounts, business activity,
18 leases, phones, property, or other presence in
19 California. Id. ¶ 8. Defendant Castillo has never been
20 to California in connection with the Website or
21 business, only having visited for occasional vacation
22 travel. Id. ¶ 9. Accordingly, the Court concludes that
23 the exercise of general jurisdiction over Defendant
24 Castillo would not be appropriate in this forum.

25 **B. Specific Jurisdiction**

26 "The inquiry whether a forum State may assert
27 specific jurisdiction over a nonresident defendant
28 focuses on the relationship among the defendant, the

1 forum, and the litigation." Walden v. Fiore, 571 U.S.
 2 277, 283-84 (2014) (internal quotation marks and
 3 citations omitted). For the assertion of specific
 4 jurisdiction to comport with due process, "the
 5 defendant's suit-related conduct must create a
 6 substantial connection with the forum State." Id. at
 7 284. The Ninth Circuit has established three
 8 requirements for a court to assert specific jurisdiction
 9 over a nonresident defendant:

10 (1) the defendant must either "purposefully
 11 direct his activities" toward the forum or
 12 "purposefully avail[] himself of the
 13 privileges of conducting activities in the
 14 forum"; (2) "the claim must be one which
 15 arises out of or relates to the defendant's
 forum-related activities"; and (3) "the
 exercise of jurisdiction must comport with
 fair play and substantial justice, i.e. it
 must be reasonable."

16 Axiom Foods, Inc. v. Acerchem Int'l, Inc., 874 F.3d
 17 1064, 1068 (9th Cir. 2017) (quoting Dole Foods Co., Inc.
 18 v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002)). The
 19 plaintiff bears the burden of establishing the first two
 20 prongs of the test. Id. "If the plaintiff meets that
 21 burden, 'the burden then shifts to the defendant to
 22 "present a compelling case" that the exercise of
 23 jurisdiction would not be reasonable.'" Id. at 1068-69
 24 (quoting Schwarzenegger, 374 F.3d at 802).

25 1. Purposeful Direction

26 Because this action involves copyright
 27 infringement, which sounds in tort, the purposeful
 28 direction analysis applies here. See Mavrix Photo, 647

1 F.3d at 1228. Purposeful direction is analyzed under
 2 the "effects" test drawn from Calder v. Jones, 465 U.S.
 3 783 (1984). See Axiom Foods, 874 F.3d at 1069. Under
 4 this test, Plaintiff must show that Defendant Castillo
 5 "(1) committed an intentional act, (2) expressly aimed
 6 at the forum state, (3) causing harm that the defendant
 7 knows is likely to be suffered in the forum state." Id.
 8 (citation omitted). All three requirements must be met
 9 for specific jurisdiction to attach. See Picot, 780
 10 F.3d at 1215 n.4.

11 a. *Intentional Act*

12 A defendant commits an intentional act "when he
 13 acts with 'an intent to perform an actual, physical act
 14 in the real world, rather than an intent to accomplish a
 15 result or consequence of that act.'" AMA Multimedia,
 16 970 F.3d at 1209 (quoting Schwarzenegger, 374 F.3d at
 17 806). Here, Plaintiff alleges that Defendant Castillo
 18 created copies of the Subject Photographs and published
 19 them on his Website and social media accounts. Compl.
 20 ¶ 11; Opp'n 3:15-22. Defendant Castillo does not
 21 dispute that he engaged in these acts but contends that
 22 he obtained the Subject Photographs from other people,
 23 not Plaintiff, and properly credited those sources in
 24 his reposting. Mot. & Castillo Decl. ¶¶ 11-16. In the
 25 context of the effects test, however, Defendant Castillo
 26 need not intend to infringe Plaintiff's copyrights to
 27 commit an intentional act; it suffices that Defendant
 28 Castillo acted intentionally in copying and reposting

1 the Subject Photographs. See Schwarzenegger, 374 F.3d
2 at 806; Mavrix Photo, 647 F.3d at 1229 ("There is no
3 question that [the defendant] acted intentionally
4 reposting the allegedly infringing photos").
5 The first prong is thus satisfied.

6 b. *Expressly Aimed*

7 The second prong of the effects test asks whether
8 Defendant Castillo's acts were "expressly aimed at the
9 forum." Pico, 780 F.3d at 1214. Plaintiff must show
10 that California—and, for the venue inquiry, this
11 district—was a "focal point both of [Defendant
12 Castillo's actions] and of the harm suffered." Axiom
13 Foods, 874 F.3d at 1071 (quoting Walden, 571 U.S. at
14 287). Plaintiff fails to meet its burden here.

15 First, Plaintiff appears to argue that the express
16 aiming prong is met because Defendant Castillo posted
17 the Subject Photographs on interactive websites.
18 Plaintiff describes Defendant Castillo's Twitter and
19 Instagram accounts as "highly interactive" websites that
20 solicit comments and "retweets" by other users. See
21 Opp'n 4:3-5. Plaintiff suggests that the Website is
22 likewise interactive because it solicits California
23 consumers to follow Defendants' social media accounts;
24 California consumers in fact follow those other social
25 media accounts; the Website solicits consumers to
comment on it; and, in doing so, consumers provide their
name, e-mail address, and website. See id. at 4 n.2.
26 ///

1 However, the websites' alleged level of
2 interactivity alone is insufficient to establish express
3 aiming. See Cybersell, Inc. v. Cybersell, Inc., 130
4 F.3d 414, 419 (9th Cir. 1997) (emphasis added) ("[T]he
5 likelihood that personal jurisdiction can be
6 constitutionally exercised is directly proportionate to
7 the nature and quality of commercial activity that an
8 entity conducts over the Internet." (quoting Zippo Mfg.
9 Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124
10 (W.D. Pa. 1997))); Wonderful Co. LLC v. Nut Cravings
11 Inc., No. 2:20-CV-11738-SVW-JEM, 2021 WL 3598859, at *3
12 (C.D. Cal. Apr. 22, 2021) ("More recent Ninth Circuit
13 case law makes clear that interactivity, whatever its
14 role, is only one among many factors considered as part
15 of the express aiming test." (citing Mavrix Photo, 647
16 F.3d at 1229)). "For an interactive website to confer
17 personal jurisdiction, a plaintiff must allege
18 'something more.'" ThermoLife Int'l, LLC v.
19 NetNutri.com LLC, 813 F. App'x 316, 318 (9th Cir. 2020).
20 "Operating a universally accessible website alone cannot
21 satisfy the express aiming prong." Spy Optic, Inc. v.
22 AreaTrend, LLC, 843 F. App'x 66, 68 (9th Cir. 2021); see
23 Mavrix Photo, 647 F.3d at 1231 ("Not all material placed
24 on the Internet is, solely by virtue of its universal
25 accessibility, expressly aimed at every state in which
26 it is accessed."). "[A] plaintiff must also show that
27 the website 'directly target[ed] the forum.'" Sky
28 Optic, 843 F. App'x at 68 (quoting AMA Multimedia, 970

1 F.3d at 1210).

2 Plaintiff next contends that Defendant Castillo has
3 done "something more" to target Southern California
4 residents, submitting evidence of advertisements for a
5 Southern California law firm and health care services
6 found on the Website. See Opp'n 4:16-5:13; Ardalan
7 Decl. Ex. A. According to Plaintiff, Defendant Castillo
8 "exploited the personal and private information of
9 Southern California residents for [his] own benefit"
10 because these advertisements solicited Southern
11 California consumers and resulted in revenue for
12 Defendant Castillo. Opp'n 5:8-11.

13 A defendant can be said to have "expressly aimed"
14 at a forum where its website "with national viewership
15 and scope appeals to, and profits from, an audience in
16 [that forum]." Mavrix Photo, 647 F.3d at 1231; see Sky
17 Optic, 843 F. App'x at 68 ("A defendant directly targets
18 a forum when its website 'appeals to, and profits from,
19 an audience in [that] state.'" (quoting Mavrix Photo,
20 647 F.3d at 1231)). While the advertisements may show
21 that Defendant Castillo "profits from" viewers in
22 Southern California, there is no suggestion that the
23 Website "appeals to" a Southern California audience.
24 See AMA Multimedia, 970 F.3d at 1211 n.7. Plaintiff
25 alleges that the Website is "dedicated to athletic
26 shoes, especially new releases from top brands" and
27 features an online shop that sells branded streetwear.
28 Compl. ¶ 10. Nothing indicates that the Website has a

1 Southern California-specific focus or appeals to a
 2 significant Southern California audience. See Mavrix,
 3 647 F.3d at 1230 (finding the express aiming prong
 4 satisfied where the operator of a website with "a
 5 specific focus on the California-centered celebrity and
 6 entertainment industries" used the plaintiff's
 7 copyrighted photos "as part of its exploitation of the
 8 California market for its own commercial gain," and the
 9 California audience was "an integral component of [the
 10 website operator]'s business model and its
 11 profitability").

12 In addition, the fact that Defendant Castillo's
 13 Website and social media accounts have some Southern
 14 California consumers and followers is insufficient to
 15 show that Defendant Castillo expressly aimed his
 16 intentional acts at the Southern California market. See
 17 AMA Multimedia, 970 F.3d at 1211 (holding that a foreign
 18 adult film website operator had not expressly aimed
 19 content at the U.S. market even though nearly 20% of the
 20 website's users were in the United States where the
 21 website "lack[ed] a forum-specific focus"); Headspace
 22 Int'l, LLC v. New Gen Agric. Servs., LLC, No. CV-16-
 23 3917-RGK (GJSx), 2016 WL 9275781, at *4 (C.D. Cal. Nov.
 24 15, 2016) (finding contact with California citizens
 25 through social media accounts to be insufficient to
 26 establish express aiming at California).

27 Moreover, Defendant Castillo avers that he did not
 28 choose, control, or display the advertisements found on

1 the Website. Reply & Supporting Decl. 2, ECF No. 21.
 2 Rather, the underlying browser or platform selects the
 3 advertisements displayed to a user "based upon their
 4 tracking of the user's search history, cookies and
 5 location." Id. The Supreme Court "made clear that the
 6 third-party advertiser's behavior cannot be attributed
 7 to the defendant as a contact." AMA Multimedia, 970
 8 F.3d at 1211 n.6 (citing Walden, 571 U.S. at 284).
 9 Because the targeted advertisements are selected by a
 10 third party, their geographic focus cannot support a
 11 finding that Defendant Castillo expressly aimed its
 12 intentional acts at Southern California. See Walden,
 13 571 U.S. at 284 ("We have consistently rejected attempts
 14 to satisfy the defendant-focused 'minimum contacts'
 15 inquiry by demonstrating contacts between the plaintiff
 16 (or third parties) and the forum State."); AMA
 17 Multimedia, 970 F.3d at 1211 (stating that geo-located
 18 advertisements provided by a third party do not
 19 establish that the defendant expressly aimed at the
 20 forum, as such advertisements "are always directed at
 21 the forum" and the defendant "does not personally
 22 control the advertisements shown on the site").

23 Plaintiff also argues that the express aiming
 24 requirement is satisfied because Defendant Castillo
 25 posted the Subject Photographs on Twitter and Instagram—
 26 California companies whose terms and conditions prohibit
 27 infringement and are subject to California law. See
 28 Opp'n 4:3-7, 5:13-15; Compl. ¶ 2. The Court disagrees.

1 Evidence that Defendant Castillo utilized the services
 2 of California-based internet companies to allegedly
 3 infringe Plaintiff's copyrights does not establish
 4 express aiming at California. See Werner v.
 5 Dowlatsingh, 818 F. App'x 671, 673 n.2 (9th Cir. 2020)
 6 ("Uploading a video to YouTube—which has its
 7 headquarters in San Bruno, California—is not an act
 8 expressly aimed at California simply because the company
 9 is based in the state."); Brophy v. Almanzar, 359 F.
 10 Supp. 3d 917, 925 (C.D. Cal. 2018) (collecting cases).
 11 Further, "[Defendant Castillo]'s contracts with third
 12 parties about choice of law, jurisdiction, and venue
 13 have nothing to do with whether it directed its tortious
 14 activities towards an entity not a party to those
 15 agreements." Good Job Games Bilism Yazilim Ve Pazarlama
 16 A.S. v. SayGames LLC, 458 F. Supp. 3d 1202, 1210-11
 17 (N.D. Cal. 2020); accord Voodoo SAS v. SayGames LLC, No.
 18 19-CV-07480-BLF, 2020 WL 3791657, at *5 (N.D. Cal. July
 19 7, 2020). A choice of law provision stating that
 20 California law governs does not establish proper venue
 21 here. See Amberger v. Legacy Cap. Corp., No. 16-cv-
 22 05622-JSC, 2017 WL 264078, at *3 (N.D. Cal. Jan. 20,
 23 2017) ("A forum selection clause determines where the
 24 case will be heard, it is separate and distinct from
 25 choice of law provisions"). And to the extent
 26 that Plaintiff relies on jurisdiction and forum
 27 selection clauses in third-party websites' terms and
 28 conditions, see Opp'n 8:11-14, such reliance is

1 unavailing. Defendant Castillo's acceptance of a third
 2 party's terms and conditions may be sufficient to
 3 establish his consent to personal jurisdiction in a
 4 dispute between Defendant Castillo and the third party,
 5 but it is alone insufficient to confer personal
 6 jurisdiction over Defendant Castillo in an action
 7 brought by Plaintiff.¹ See Melendez v. Vaiana, No. EDCV
 8 16-2516 JGB (SPx), 2017 WL 8183139, at *3 (C.D. Cal.
 9 Oct. 19, 2017) (declining to find that the defendants
 10 had "automatically consented to the personal
 11 jurisdiction of a court included in a website's terms'
 12 forum selection clause for third-party disputes related
 13 to the site").

14 Finally, Plaintiff alleges that Defendant Castillo
 15 has "solicit[ed] and engag[ed] in numerous commercial
 16 transactions with California users." Compl. ¶ 2. But
 17 "[s]elling products on the internet on a national scale
 18 is insufficient to establish personal jurisdiction in
 19 any one [forum] without additional evidence of conduct
 20 focused on that [forum]."Wonderful Co., 2021 WL
 21 3598859, at *2. As discussed above, Plaintiff fails to
 22 show Southern California-focused conduct on the part of
 23

24 ¹ Even if Defendant Castillo's agreements with third-party
 25 entities were applicable to this action, the forum selection
 26 clauses contained in those terms and conditions would confer
 27 jurisdiction in the Northern District of California. See Ardalan
 28 Decl. Exs. C-E, ECF Nos. 19-4 to -6; Opp'n 8:11-14. But, for
 purposes of venue in this copyright action, the relevant inquiry
 is whether the exercise of personal jurisdiction would be
 appropriate in the Central District of California.

1 Defendant Castillo. Moreover, Plaintiff alleges that
 2 Defendant Castillo's online shop sells Modern Notoriety-
 3 branded streetwear, see Compl. ¶ 10, but Defendant
 4 Castillo's uncontroverted declaration states that none
 5 of the products shown in the Subject Photographs were
 6 ever available for purchase on the Website, see Mot. &
 7 Castillo Decl. ¶ 4. Any sales to Southern California
 8 residents are thus unconnected to Plaintiff's copyright
 9 claim and cannot support a finding of specific
 10 jurisdiction. See Walden, 571 U.S. at 284 ("[T]he
 11 defendant's *suit-related conduct* must create a
 12 substantial connection with the forum State." (emphasis
 13 added)); AirWair Int'l Ltd. v. Pull & Bear Espana SA,
 14 No. 19-CV-07641-SI, 2020 WL 2113833, at *4 (N.D. Cal.
 15 May 4, 2020) (rejecting allegations "as irrelevant to
 16 the specific jurisdiction analysis, since those
 17 allegations concern the sale of clothing and not the
 18 'suit-related conduct' of selling the allegedly
 19 infringing shoes").

20 In sum, Plaintiff has not established that
 21 Defendant Castillo expressly aimed his intentional acts
 22 toward this district. The only asserted contacts
 23 between Defendant Castillo and Southern California are
 24 too "random, fortuitous, or attenuated" to confer
 25 specific jurisdiction over Defendant Castillo. Walden,
 26 571 U.S. at 286. Because Plaintiff has not satisfied
 27 the second prong of the Ninth Circuit's purposeful
 28 direction test, the Court need not address the remaining

1 requirements for specific jurisdiction. See
2 Schwarzenegger, 374 F.3d at 807 n.1 (noting that the
3 court “need not, and do[es] not, reach the third part of
4 the [purposeful direction] test” because the plaintiff
5 failed to establish the express aiming requirement); AMA
6 Multimedia, 970 F.3d at 1212 n.9 (“Because we hold that
7 [the plaintiff] has failed to meet its burden on the
8 first prong of the minimum contacts test regarding
9 purposeful direction, we do not need to reach the second
10 and third prongs.”). The Court concludes that Plaintiff
11 has failed to make a *prima facie* showing that Defendant
12 Castillo is subject to this Court’s specific
13 jurisdiction.

14 Accordingly, because Plaintiff has not established
15 that this Court has general or specific jurisdiction
16 over Defendant Castillo within the meaning of the
17 Copyright Act, venue is not proper in this district.
18 Where a court determines that venue is improper, it may
19 either dismiss the action without prejudice or, if it is
20 “in the interest of justice,” transfer the action “to
21 any district or division in which it could have been
22 brought.” 28 U.S.C. § 1406(a); In re Hall, Bayoutree
23 Assocs., Ltd., 939 F.2d 802, 804 (9th Cir. 1991) (“A
24 determination of improper venue does not go to the
25 merits of the case and therefore must be without
26 prejudice.”). Plaintiff does not ask the Court to
27 transfer this action. The Court therefore **GRANTS** the
28 Motion for improper venue and **DISMISSES** the action

1 against Defendant Castillo without prejudice.

2 c. *Jurisdictional Discovery and Leave to Amend*

3 Plaintiff requests that, if the Court grants the
4 Motion, Plaintiff be afforded the opportunity to conduct
5 jurisdictional discovery and amend its Complaint. Opp'n
6 9:27-10:5. Plaintiff does not explain what discovery
7 requests it intends to propound, let alone how discovery
8 would alter the Court's jurisdictional analysis. See
9 Boschetto, 539 F.3d at 1020 (affirming the district
10 court's denial of request for jurisdictional discovery
11 where the request "was based on little more than a hunch
12 that [discovery] might yield jurisdictionally relevant
13 facts"); Barantsevich, 954 F. Supp. 2d at 996
14 ("Jurisdictional discovery need not be allowed . . . if
15 the request amounts merely to a 'fishing expedition.'"
16 (citations omitted)). Because Plaintiff has failed to
17 show more than speculative allegations of attenuated
18 jurisdictional contacts "in the face of specific
19 denials" made by Defendant Castillo, "the Court need not
20 permit even limited discovery." Terracom v. Valley
21 Nat'l Bank, 49 F.3d 555, 562 (9th Cir. 1995). The Court
22 therefore **DENIES** Plaintiff's request for jurisdictional
23 discovery.

24 Plaintiff has not suggested that it could amend its
25 Complaint to allege additional jurisdictional facts
26 absent jurisdictional discovery, which, as discussed
27 above, is unwarranted. Accordingly, the Court **DENIES**
28 leave to amend.

IV. CONCLUSION

Based on the foregoing, the Court **GRANTS** Defendant Castillo's Motion for improper venue pursuant to Rule 12(b) (3) and **DENIES as moot** Defendant Castillo's remaining grounds for dismissal. Defendant Castillo is **DISMISSED** from this action without prejudice.

IT IS SO ORDERED.

DATED: September 15, 2021

/s/ Ronald S.W. Lew

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge